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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 24

[RIN: 1512-AB78]

(T.D. ATF- 403)

Implementation of Public Law 105-34, Section 1417, Related to the Use of Additional Ameliorating Material in Certain Wines.

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements one of the provisions of the Taxpayer Relief Act of 1997. In accordance with the new law, the wine regulations are amended to extend the amelioration and sweetening limitations so that wines made exclusively from any fruit (excluding grapes) or berry with a fixed acid content of 20 or more parts per thousand are entitled to a volume of up to 60 percent ameliorating material. This change is made in Parts 4 and 24. In the Proposed Rules section of this volume of the Federal Register, ATF is also issuing a notice of proposed rulemaking inviting comments on this temporary rule for a 90-day period following the publication of this temporary rule.

DATES: The temporary regulations are retroactive to April 1, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221.

FOR FURTHER INFORMATION CONTACT: Thomas B. Busey, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927-8204.

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements one of the provisions of the Taxpayer Relief Act of 1997, Public Law 105-34 ("the Act"). Section 1417 of the Act amended Section 5384(b)(2)(D) of the Internal Revenue Code of 1986 by striking "loganberries, currants, or gooseberries," and inserting "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction to such fruit or berry)."

Current Regulation for Amelioration of Fruit and Berries

Before enactment of the Act, the amelioration and sweetening limitations of 26 U.S.C. 5384 (b)(2)(D) could only be used for wines produced exclusively from loganberries, currants, or gooseberries. For wine produced exclusively from loganberries, currants, or gooseberries, the volume of ameliorating material added to juice or wine may not have exceeded 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting fixed acid level was or exceeded 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may have been added to each 1,000 gallons of wine or juice.

Section 1417 of Public Law 105-34 now extends the amelioration and sweetening limitations so that wines made from any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) is entitled to a volume of up to 60 percent ameliorating material. These provisions do not apply to grape wine, only to fruit or berry wine.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this temporary rule, the provisions of the Regulatory Flexibility Act (5 USC 601) do not apply. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866.

#### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR Part 1320, do not apply to this temporary rule because no new collection of information is contained in this regulation.

#### Administrative Procedure Act

It has been determined that 5 USC 553 (b)(A) applies to this temporary rule. Moreover, because this document merely implements a section of the law which was effective April 1, 1998, and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

#### Drafting Information

The principal author of this document is Thomas B. Busey, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

#### List of Subjects

## 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

## 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

### Authority and Issuance:

Accordingly, Chapter I of title 27, Code of Federal Regulations is amended as follows:

### PART 4--LABELING AND ADVERTISING OF WINE

Par. 1. The authority citation for 27 CFR part 4 continues to read as follows: Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.21 is amended by revising the proviso in paragraph (e)(1)(i) to read as follows:

§4.21 The standards of identity.

\* \* \* \* \*

(e) \* \* \*

(1)(i) . . . Provided, That a domestic product may be ameliorated or sweetened in accordance with the provisions of 26 U.S.C. 5384 and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of dry sugar and water solution as will increase the volume of resulting product, in the case of wines produced from any fruit or berry other than grapes, having a normal acidity of 20 parts or more per thousand, not more than 60 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

\* \* \* \* \*

Par. 3. Section 4.22 is amended by revising the last sentence of paragraph (b)(5) to read as follows:

§4.22 Blends, cellar treatment, alteration of class or type.

\* \* \* \* \*

(b) \* \* \*

(b)(5) . . . Provided, That the class or type thereof shall not be deemed to be altered (i) where such wine (other than grape wine) is derived from fruit, or other agricultural products, having a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters, and the content of natural acid is not less than 7.5 parts per thousand and (ii) where such wine is derived exclusively from fruit, or other agricultural products, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 percent by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wine when produced from fruit or berries other than grapes) there is stated as part of the class and type designation the phrase "Made with over 35 percent sugar solution".

\* \* \* \* \*

## PART 24--WINE

Par. 1. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111-5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.178 is amended by revising paragraph (b) (3) and (b) (4) to read as follows:

§24.178 Amelioration.

\* \* \* \* \*

(b) \* \* \*

(b) (3) For all wine, except for wine described in (b) (4), the volume of ameliorating material added to juice or wine may not exceed 35 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). Where the starting fixed acid level is or exceeds 7.69 grams per liter, a maximum of 538.4 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice.

(b) (4) For wine produced from any fruit (excluding grapes) or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry), the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice (calculated exclusive of pulp). If the starting fixed acid level is or exceeds 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice. (26 U.S.C. 5383, 5384).

\* \* \* \* \*

Signed:

Director

Approved:

Deputy Assistant Secretary

(Regulatory, Tariff and Trade Enforcement)